

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SELIM ZHERKA,

Plaintiff,

-against-

PHILIP AMICONE, individually, and PHILIP
AMICONE in his capacity as Mayor of the City of
Yonkers, New York,

Defendant.

ECF Case

07 Civ. 9618 (CLB)(GAY)

Amended Answer and Counterclaims

Jury Trial Demanded

Defendant Philip Amicone ("Amicone"), by and through his attorneys DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, as and for his Answer to the Complaint herein (the "Complaint"), alleges as follows:

"Nature of the Action"

1. Amicone denies the truth of the allegations set forth in paragraph 1 of the Complaint as they relate to the actions of Amicone. The remaining actions set forth in paragraph 1 of the Complaint state legal conclusions as to which no responsive pleading is required.

"Jurisdiction"

2. The allegations set forth in paragraph 2 of the Complaint state legal conclusions as to which no responsive pleading is required. Amicone respectfully refers the Court to 28 U.S.C. § 1331, 1343 and 1367 for their complete terms.

"The Parties"

3. Amicone denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Complaint.

4. Amicone denies each and every allegation set forth in paragraph 4 of the Complaint, except admits that he is the Mayor of the City of Yonkers.

"The Facts"

5. Amicone admits the truth of the allegations set forth in paragraph 5 of the Complaint.

6. Amicone denies each and every allegation set forth in paragraph 6 of the Complaint.

7. Amicone denies each and every allegation set forth in paragraph 7 of the Complaint.

8. Amicone denies each and every allegation set forth in paragraph 8 of the Complaint.

9. Amicone denies each and every allegation set forth in paragraph 9 of the Complaint.

"As and for a First Claim"

10. Amicone repeats and realleges his responses to the allegations contained in paragraphs 1 through 9 of the Complaint as if fully set forth herein.

11. Amicone denies each and every allegation set forth in paragraph 11 of the Complaint.

"As and for a Second Claim"

12. Amicone repeats and realleges his responses to the allegations contained in paragraphs 1 through 11 of the Complaint as if fully set forth herein.

13. Amicone denies each and every allegation set forth in paragraph 13 of the Complaint.

"As and for a Third Claim"

14. Amicone repeats and realleges his responses to the allegations contained in paragraphs 1 through 13 of the Complaint as if fully set forth herein.

15. Amicone denies each and every allegation set forth in paragraph 15 of the Complaint.

As and for a First Affirmative Defense

16. The Complaint fails to state a claim upon which relief can be granted.

As and for a Second Affirmative Defense

17. Amicone is entitled to qualified and/or absolute immunity.

As and for a Third Affirmative Defense

18. Any alleged statements made by Amicone were true.

As and for a Fourth Affirmative Defense

19. Any alleged statements made by Amicone were opinion.

As and for a Fifth Affirmative Defense

20. Any alleged statements made by Amicone were not defamatory *per se*.

As and for a Sixth Affirmative Defense

21. Plaintiff Selim Zherka ("Zherka") failed to plead special damages.

As and for a Seventh Affirmative Defense

22. Zherka is a public figure and has failed to plead that any of the alleged statements were made with actual malice.

As and for an Eighth Affirmative Defense

23. Zherka's defamation claim is barred because, even if the statements could properly be attributed to Amicone, they are privileged and/or protected by one or more

immunities, including, but not limited to, the First and Fourteenth Amendments to the Constitution of the United States and the immunity doctrine.

As and for a Ninth Affirmative Defense

24. Zherka's claims are barred because he did not incur any injury or damages cognizable at law.

As and for a Tenth Affirmative Defense

25. Zherka is not entitled to punitive damages under applicable law.

As and for an Eleventh Affirmative Defense

26. Zherka lacks capacity and/or standing to sue.

AS AND FOR AMICONE'S COUNTERCLAIMS

27. Amicone brings these counterclaims to recover damages, fees and costs incurred as a direct result of, *inter alia*, certain false and defamatory statements made by Zherka.

The Parties

28. Amicone is, and at all relevant times was, an individual residing in the State of New York and the duly elected Mayor of the City of Yonkers, New York.

29. Upon information and belief, Zherka is, and at all relevant times was, an individual residing in the State of New York. Zherka is also the President and Owner of The Westchester Guardian, a weekly periodical which purports to "cover news and events relevant to residents and businesses all over Westchester County."

Jurisdiction and Venue

30. Jurisdiction is vested in this Court under 28 U.S.C. § 1367(a) in that Amicone's counterclaims are so related to claims in the action within which original jurisdiction exists such that said claims form part of the same case or controversy under Article III of the United States Constitution.

31. This Court has jurisdiction over Zherka because Zherka: (i) resides in the State of New York; (ii) expressly consented to jurisdiction in the State of New York; and (iii) is otherwise subject to jurisdiction in the State of New York pursuant to CPLR 301 and 302.

32. Venue is proper in this judicial district under 28 U.S.C. § 1391 because Zherka expressly consented to venue in this judicial district and because a substantial part of the events giving rise to the claims herein have occurred in this judicial district

As and for a First Counterclaim
(Libel)

33. On November 1, 2007, Zherka published an article in The Westchester Guardian regarding Amicone, entitled "It's Still A Tale of Two Cities...Seriously In Need of Change." A true and correct copy of this article is annexed hereto as Exhibit A.

34. The November 1, 2007 edition of The Westchester Guardian provides, in pertinent part, as follows:

Consider:

People now realize the Phil Amicone is a real tyrant, an oppressive politician who cannot accept criticism.

He is no friend of the City's public employees. He called Yonkers teachers "terrorists" for picketing for higher wages. He refused new police and fire department contracts for 2 ½ years.

He is a huge hypocrite. Pretending to be "holier than thou", he actually frequents strip clubs; even had a "lap dance" from a girl by the name of Sassy.

It's time for honesty and integrity; it's time for Dennis Robertson.

Ex. A (emphasis added).

35. Zherka knew that certain statements published in the November 1, 2007 edition of The Westchester Guardian were false and defamatory.

36. Zherka published these statements with actual malice (i.e., despite knowing that these statements were false and/or in reckless disregard for the truth concerning these statements).

37. Zherka acted in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.

38. The false statements made by Zherka in the November 1, 2007 edition of The Westchester Guardian constitute libel.

39. As a direct and proximate result of the actions described herein, Amicone has suffered special damages in the form of damage to his personal, professional, occupational and political reputation.

40. The amount of special damages incurred by Amicone will be proven at trial.

As and for a Second Counterclaim
(Libel Per Se)

41. Amicone repeats and realleges each and every allegation contained in paragraphs 27 through 40 above with the same force and effect as if fully set forth herein.

42. Zherka knew, or should have known, that certain statements published in the November 1, 2007 edition of The Westchester Guardian were false and defamatory.

43. Zherka published these statements with the intent to disparage and damage Amicone's personal, professional, occupational and political reputation.

44. The false statements published by Zherka in the November 1, 2007 edition of The Westchester Guardian constitute libel *pe se*.

45. As a direct and proximate result of the actions described herein, Amicone has suffered damages in an amount to be proven at trial.

As and for a Third Counterclaim

46. Amicone repeats and realleges each and every allegation contained in paragraphs 27 through 45 above with the same force and effect as if fully set forth herein.

47. At the conclusion of this action, Amicone will be the prevailing party as that term is used under 42 U.S.C. § 1988.

48. Zherka is liable to Amicone for his legal fees and expert fees pursuant to 42 U.S.C. § 1988 in connection with his defense and prosecution of this action.

WHEREFORE, Amicone prays for relief as follows:

- (i) For an Order dismissing the Complaint in its entirety;
- (ii) On the First Counterclaim, for damages against Zherka in an amount to be determined at trial;
- (iii) On the Second Counterclaim, for damages against Guardian News and Blassberg in an amount to be proven at trial;
- (iv) On the Third Counterclaim, for legal fees and expert fees pursuant to 42 U.S.C. § 1988; and
- (iv) For such other and further relief as the Court deems just and proper.

Dated: White Plains, New York
May 12, 2008

DELBELLO DONNELLAN WEINGARTEN
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EXHIBIT A

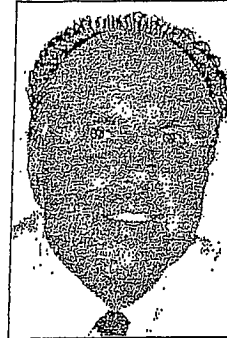
THE WESTCHESTER GUARDIAN

VOL. II NO. XIII

Westchester's Most Influential Weekly

THURSDAY, NOVEMBER 1, 2007

The Good:

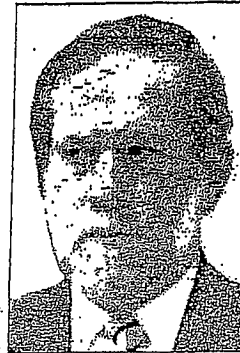


Dennis Robertson



Clinton Young

The Bad:



Phil Amicone



Ernest Davis

and

The Ugly:

See... The Advocate, p.5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 07 Civ. 7692
Dated: 11/1/07
Page 1 of 1

United States District Court
UNITED STATES OF AMERICA
v.
PREMIER YORK AND DESCRIBED AS (1)
OFFICE OF THE CITY OF MT. VERNON
UNPAID OF PUBLIC WORKS AT 120
NORTH THIRD AVENUE, MT. VERNON, NEW
YORK 10550 AND (2) RESPECTIVE LOCATIONS
AT MOUNT VERNON CITY HALL
AT 1 HICKORY STREET, MOUNT VERNON,
NEW YORK 10550

THE WESTCHESTER GUARDIAN

THURSDAY, NOVEMBER 1, 2007

Sandy Annabi Strongly Endorses Dennis Robertson

Tells District Two Constituents "If We Elect Dennis As Our Next Mayor We Will Finally Get Our Fair Share From The City of Yonkers."

Dear Friends and Neighbors,

For the past several years, as your City Council Representative, I have steadfastly fought for your best interests. That is why I am writing to you now, to urge you to go to the polls on Election Day, Tuesday, November 6, and vote for Dennis Robertson for Mayor of Yonkers.

With Dennis Robertson as our Mayor, we, the residents of District Two, will finally get the level of service from the City of Yonkers we have long deserved. Dennis has demonstrated by his conduct on the City Council, that he has the best interests of the residents of Southwest Yonkers at heart.

Dennis Robertson and I have a great working relationship and share the same views on many issues that effect the quality of life of our residents. Dennis Robertson is hard-working and dedicated. He listens and, most importantly, he will help me to help you. This is a very important election for all of Yonkers, but most important for us, the People of District Two. If we elect Dennis as our next Mayor, we will finally get our fair share from the City of Yonkers.

Best regards,
Sandy



Yonkers City Council Member
Sandy Annabi

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THE WESTCHESTER GUARDIAN

2 William Street, Suite 406

White Plains, NY 10601

Westchester's Most Influential Weekly

Publisher
Guardian News Corp.
Sam Zherka, President

Editor-in-Chief:
Richard Blassberg

Graphic Designer/Newspaper & Advertising Design
John Tufts

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Advertising: 914.576.1481 • F 914.633.0806 • advertising@westchesterguardian.com

Published Every Thursday

THE WESTCHESTER GUARDIAN

THURSDAY, NOVEMBER 1, 2007

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The Advocate

Richard Blassberg

It's Still A Tale Of Two Cities... Seriously In Need of Change!



It's all about me

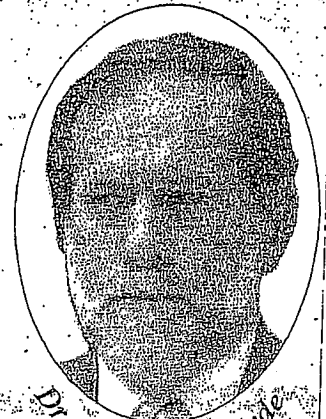
Consider:

Ernie Davis is a very tired act. The truth is, he is very frightened to give up control for fear that he will be more vulnerable to criminal apprehension.

Ernie has long ago stopped caring about what is best for the families of Mount Vernon; and, now, his poor judgment, his self-serving conduct, and his broken promises, have caught up with him.

Things have grown so bad in many areas of the city, crime so rampant, taxes so high, the quality of life so desperate, that some families have moved back to the Bronx.

It is time for positive change; it's time for Clinton Young.



Dr. Jekyll & Mr. Hyde

Consider:

People now realize that Phil Amicone is a real tyrant, an oppressive politician who cannot accept criticism.

He is no friend of the city's public employees. He called Yonkers teachers "terrorists" for picketing for higher wages. He refused new police and fire department contracts for 2 1/2 years.

He is a huge hypocrite. Pretending to be "holier than thou", he actually frequents strip clubs; even had a "lap dance" from a girl by the name of Sassy.

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